

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LESLIE JAMES PICKERING,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE and
U. S. DEPARTMENT OF HOMELAND SECURITY,

Defendants.

Complaint

1. This is an action under the Freedom of Information Act (FOIA), 5 USC §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records pertaining to Scott Crow (hereinafter “Crow”) that have been improperly withheld by defendants U. S. Department of Justice (hereinafter “DOJ”) and its components Bureau of Alcohol, Tobacco, Firearms and Explosives (hereinafter “ATF”) and Federal Bureau of Investigation (hereinafter “FBI”) and the U. S. Department of Homeland Security (hereinafter “DHS”) and its components Customs and Border Protection (hereinafter “CBP”), Federal Emergency Management Agency (hereinafter “FEMA”), Office of Intelligence and Analysis (hereinafter “I&A”) and Transportation Security Administration (hereinafter “TSA”).

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC §552 (a) (4) (B). This Court also has jurisdiction over this action pursuant to 28 USC §1331. Venue lies in the district under 5 USC §552 (a) (4) (B).

Parties

3. Plaintiff Pickering is a proprietor of Burning Books, a Buffalo bookstore specializing in social justice struggles and state repression. He is also a Political Science and Sociology Lecturer at Niagara University.

4. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entities ATF and FBI. DOJ is an agency within the meaning of 5 USC §552 (f) (1).

5. Defendant DHS is a Department of the Executive Branch of the United States Government, and includes component entities CBP, FEMA, I&A and TSA. DHS is an agency within the meaning of 5 USC §552 (f) (1).

Facts

ATF

6. By letter dated March 3, 2018, addressed to ATF, plaintiff requested copies of all records pertaining to Crow.

7. By letter dated March 28, 2018, ATF advised plaintiff that it was not able to locate any responsive records subject to FOIA. See Request Number 2018-0740.

8. By letter dated June 21, 2018, plaintiff filed an administrative appeal with the Office of Information Policy (hereinafter “OIP”), a DOJ component.

9. By letter dated July 23, 2018, OIP advised plaintiff that his administrative appeal had been received on July 2, 2018 and that it had been assigned number DOJ-AP-2018-007009.

10. By letter dated August 15, 2018, OIP denied plaintiff’s administrative appeal.

11. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

12. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and ATF failed to conduct an adequate search for responsive records and has wrongfully withheld the sought-after information from plaintiff.

FBI

13. By letter dated March 3, 2018, addressed to the FBI, plaintiff requested copies of all records pertaining to Crow.

14. By letter dated March 28, 2018, the FBI made plaintiff aware that his FOIA request had been received at FBI Headquarters for processing. See FOIPA Request No. 1400558-000.

15. By letter dated May 8, 2018, plaintiff filed an administrative appeal with OIP.

16. By letter dated May 29, 2018, OIP advised plaintiff that his administrative appeal had been received on May 15, 2018 and that it had been assigned number DOJ-AP-2018-005617.

17. By letter dated June 22, 2018, OIP denied plaintiff's administrative appeal.

18. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

19. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and the FBI failed to conduct an adequate search for responsive records and has wrongfully withheld the sought-after information from plaintiff.

DHS

20. By letter dated March 3, 2018, addressed to DHS, plaintiff requested copies of all records pertaining to Crow.

21. By letter dated March 13, 2018, DHS advised plaintiff that his FOIA had been received on March 13, 2018 and that it had been assigned reference number 2018-HQFO-00736.

In addition, DHS, among other things, requested the name(s) of the DHS component(s) that created and/or controlled sought-after records.

22. By letter dated July 13, 2018, counsel for plaintiff informed DHS that CBP, FEMA, I&A and TSA may possess records pertaining to Crow.

23. By letter dated October 10, 2018, plaintiff filed an administrative appeal with the DHS Privacy Office.

24. By letter dated October 18, 2018, DHS acknowledged receipt of plaintiff's administrative appeal and that it had been assigned number 2019-HQAP-00025.

25. DHS failed to make a determination on plaintiff's administrative appeal as required by 5 USC §552 (a) (6) (A) (ii).

26. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

27. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and DHS failed to conduct an adequate search for responsive records and has wrongfully withheld the sought-after information from plaintiff.

Requested Relief

Wherefore, plaintiff prays that this Court:

1. order defendants to conduct a search for any and all responsive records to plaintiff's requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the requests;

2. order defendants to produce, by a date certain, any and all non-exempt records responsive to plaintiff's requests and a Vaughn index of any responsive records withheld under claim of exemption;

3. enjoin defendants from continuing to withhold any and all non-exempt records responsive to plaintiff's requests;
4. grant plaintiff an award of reasonable attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC §552 (a) (4) (E) (i); and
5. grant plaintiff such other relief as the Court may deem just and proper.

Dated: March 31, 2019

Respectfully submitted,

s/michael kuzma
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